

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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SEDLEY ALLEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 97-3159-D/V
	)	
RICKY BELL,	)	
	)	
Respondent.	)	
	)	

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**ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT  
ORDER DENYING PENDING COLLATERAL MOTIONS**

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Before the Court is Petitioner's Motion to Alter or Amend Judgment pursuant to Fed. R. Civ. P. 59(e). Petitioner asserts numerous errors in the Court's judgment denying his motion for equitable relief from the Court's previous judgment granting Respondent summary judgment as to all claims raised in Petitioner's application for habeas relief. The Court entered its judgment granting Respondent summary judgment on November 15, 1999, and subsequently denied Petitioner's motion to alter or amend that judgment. See Alley v. Bell, 101 F.Supp.2d 588 (W.D. Tenn. 2000). The Court's judgment was affirmed on appeal. Alley v. Bell, 307 F.3d 380 (6th Cir. 2002), cert. denied, 540 U.S. 839 (2003). The Court denied Petitioner's motion for relief on November 28, 2005, see Order Denying Second Amended Motion Requesting Relief In The Exercise of This Court's Inherent Authority, And/Or Relief From Judgment, And/Or Certificate Of Appealability ("Order"), R. 169,

and Petitioner subsequently filed the instant motion. On January 12, 2006, Petitioner filed a "Supplement to Motion To Alter Or Amend And/Or Request For Relief From Judgment In Light of Intervening Case Law" ("Supplement"), contending that the Supreme Court's decision in Brown v. Sanders, 126 S.Ct. 884 (2006), makes clear that he is entitled to a certificate of appealability on his claim challenging the constitutionality of the heinous, atrocious, or cruel ("HAC") aggravating circumstance relied upon in sentencing him to death. For the reasons stated below, Petitioner's Motion to Alter or Amend Judgment is DENIED.

**I. STANDARDS APPLICABLE TO A MOTION TO ALTER OR AMEND**

A motion pursuant to Rule 59 is not an opportunity to re-litigate a case. Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367, 374 (6th Cir. 1998). Rather, a motion to alter or amend judgment should be granted only if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent a manifest injustice. GenCorp, Inc. v. American Intern. Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) (citations omitted).

**II. PETITIONER'S ALLEGATIONS OF ERROR**

Petitioner contends that the Court should alter or amend its judgment denying his motion for relief because: 1) the Court's reasoning in denying Petitioner's fraud upon the court claim is "fatally flawed;" 2) the Court has failed to "squarely and properly address" Petitioner's Fifth Amendment argument that he is entitled to be retroactively excused from any finding of procedural default

on the basis of the special legislation passed by Congress concerning the Terry Schiavo matter; and 3) the Court has erroneously refused to consider Petitioner's claim that "inherent powers" of the Court vest it with the authority to reopen and revise past habeas judgments, even where Fed. R. Civ. P. Rule 60(b) and applicable federal statutes forbid the Court from such actions. The Court will consider each of these arguments in turn.

### **III. ANALYSIS**

#### **A. Error in the Court's Denial of Petitioner's Fraud Claim**

Petitioner's fraud claim is discussed in the Court's order denying the motion for relief. See Order, R. 169 at 8-12. The essence of the claim is that the prosecution withheld exculpatory evidence from Petitioner during his trial and throughout all post-conviction proceedings, despite having affirmed to the trial court, in a response to a pre-trial discovery motion which is part of the state court record before this Court, that all relevant exculpatory evidence had been or would be disclosed. Petitioner submitted evidence in support of the fraud claim, including handwritten notes of the medical examiner who prepared the autopsy report on the death of the victim, a sheriff's deputy's report concerning a conversation with the medical examiner, and Petitioner's speculation that other exculpatory evidence has been withheld based on inferences he has drawn from his reading of trial transcripts and an investigative report concerning the victim's boyfriend. The Court denied Petitioner's fraud claim because, even assuming that

the prosecution had deliberately withheld the above evidence, the evidence was not relevant to either the Brady claims raised by Petitioner or the Court's basis for finding Petitioner's specific Brady claims procedurally defaulted. See Order, R. 169 at 12-13. The Court concluded that Petitioner's fraud claim, and the evidence submitted in support of the claim, was an attempt to show that his due process rights had been violated at his trial, and was not relevant to proving the perpetration of a fraud upon the Court in its consideration of Petitioner's specific Brady claims. Accordingly, the Court determined that Petitioner's fraud claim was not an attack on the integrity of the prior habeas proceedings, but rather a prohibited attempt to circumvent the AEDPA's restrictions on second or successive habeas petitions, and, therefore, the evidence proffered by Petitioner could not be considered by the Court in a motion for relief from judgment. Id.

Petitioner now contends that the Court has committed grievous error by employing "fatally flawed" reasoning which allows the state "to lie to the habeas petitioner about having disclosed evidence, and then once the petitioner catches the state in the lie, to argue that it was the petitioner's fault he didn't plead his claim with specificity while the state was gaining the benefit of withholding the evidence." Motion to Alter or Amend, R. 170 at 2. Therefore, Petitioner somehow concludes, under the Court's rationale "the state would be able to execute its citizens if the fraud was caught during initial federal proceedings, but not afterwards. This is what has occurred here." Id. at 3.

Petitioner fails to distinguish, or even address, authority cited by the Court supporting its conclusion that evidence irrelevant to the legal issues which the Court considered in rendering its judgment may not sustain a motion for relief from judgment based upon fraud. See Baltia Air Lines, Inc. v. Transaction Management, Inc., 98 F.3d 640, 643 (D.C. Cir. 1996) (affirming district court's dismissal of motion for relief based on fraud claim where "any misrepresentations to the District Court were not relevant to the court's decision to dismiss the motion"); Simons v. Gorsuch, 715 F.2d 1248, 1253 (7th Cir. 1983) (affirming district court's denial of Rule 60(b)(3) motion because the "materials presented in support of the motion are essentially irrelevant to the legal issues upon which the case turned.").

The Court reiterates that the Brady claim raised by Petitioner reads as follows:

35. In violation of the Fourteenth Amendment, the trial court and/or the prosecution withheld evidence which otherwise would have entitled Sedley Alley to a new trial, in violation of the Fourteenth Amendment. That evidence includes: the fact that the judge met with the jury *ex parte* during the course of the trial; the trial judge made derogatory profane comments about Petitioner during the course of the proceedings; the judge had other *ex parte* contact with the victim's family, including letter(s) and a Christmas card; and the withholding of Dr. Zager's opinions about mitigation, all in violation of Brady v. Maryland.

Petition For Writ Of Habeas Corpus ("Pet."), Alley v. Bell, no. 97-3159, R. 60 at 43, ¶ 35. The Court's consideration of Petitioner's Brady allegations was limited exclusively to the judicial bias and improper withholding of mitigating evidence claims specifically

articulated in the petition, see Alley, 101 F.Supp.2d at 618-20, and Petitioner does not even contend that the Court's finding of procedural default as to those claims was procured through fraudulent conduct on the part of the state's attorneys. When considering a motion for relief from judgment, this Court must concern itself only with the judgment actually rendered and the basis for that judgment. A motion for relief from judgment seeking relief for fraud upon the court simply is not the appropriate forum for wholly separate, and new, Brady claims based on evidence discovered years after the habeas judgment has been rendered and affirmed on appeal. Gonzalez v. Crosby, 125 S.Ct. 2641, 2647 (2005) ("Using Rule 60(b) to present new claims for relief from a state court's judgment of conviction - even claims couched in the language of a true Rule 60(b) motion - circumvents AEDPA's requirement that a new claim be dismissed unless it relies on either a new rule of constitutional law or newly discovered facts [and otherwise satisfies the pre-clearance requirements imposed on second and successive petitions by 28 U.S.C. § 2244(b)(2)].").

Petitioner seeks refuge in the opinion of Circuit Judge Cole, concurring in the en banc decision to remand Petitioner's motion for relief to this Court, who stated as follows:

Alley alleges that state attorneys were aware of the existence of significant exculpatory evidence, and that these attorneys nonetheless filed an affidavit in federal court stating that they had disclosed all exculpatory evidence, while willfully (or at least recklessly) concealing the evidence. These allegations are sufficient to allege fraud. . . . Moreover, Alley's allegation regarding the affidavit, whether true or not, has nothing to do with his state court proceedings and,

indeed, would not be relevant to a trial-court-related *Brady* claim. . . . As a result, the resolution of Alley's Rule 60(b) motion would be irrelevant to the constitutionality of his state trial, since success on this motion would merely serve to reopen his original habeas proceeding without determining facts that would require a finding that his state trial was unconstitutional. Thus, this claim is not effectively a second or successive petition challenging the validity of his state trial—to the contrary, Alley's allegations of fraud relate *only* to the validity of the federal habeas proceeding.

Alley v. Bell, 405 F.3d 371, 372-73 (6th Cir. 2005) (citations omitted) (emphasis in original). Thus, Petitioner argues, the Court's conclusion that Petitioner's fraud claim was a prohibited attempt at circumventing the restrictions on second or successive habeas petitions directly contradicts the position of five judges of the Sixth Circuit. First, while Circuit Judge Cole's opinion is instructive, the Court's duty on remand was "to determine, *in the first instance*, whether Alley's motion can be considered a proper Rule 60(b) motion." Id. at 372 (emphasis added). The Court has, to the best of its ability, faithfully executed that mandate. Second, the "affidavit" which Judge Cole relies upon in surmising that Petitioner's Rule 60(b) motion is a true motion is not an actual affidavit filed by the state's habeas attorneys during the habeas proceedings, but rather is the prosecution's response to a pretrial motion of Petitioner to obtain discovery of certain materials, wherein the State acknowledged its Brady requirements and pledged to so comply. See First Amended Motion Requesting Relief In The Exercise Of This Court's Inherent Authority, And/Or Relief From Judgment, And/Or Certificate Of Appealability ("motion

for relief"), R. 129 at 15-16 (discussing the prosecution's promise to disclose exculpatory evidence and referencing the trial court response to the discovery motion as exhibit three); Second Amended Motion Requesting Relief In The Exercise Of This Court's Inherent Authority, And/Or Relief From Judgment, And/Or Certificate Of Appealability ("second motion for relief"), R. 158 at 24-25. This document, of course, was part of the technical record from the state courts entered before this Court in Petitioner's federal habeas proceedings. Nowhere else in any of Petitioner's various motions for relief does he highlight any "affidavit" where the state's habeas attorneys have attested to the full disclosure of exculpatory evidence before this Court, nor does he even refer to this document as an "affidavit." Thus, it appears that Circuit Judge Cole may have misapprehended the precise nature of the "affidavit" upon which he bases his entire discussion of Petitioner's fraud claim. Petitioner's allegations regarding the "affidavit" are inextricably related to "his state court proceedings," and are relevant to his "trial-court-related *Brady* claim" because the "affidavit" originated in the trial court when Petitioner made his Brady requests. Moreover, Petitioner has himself intimated that the evidence he proffers in support of his motion for relief is not related to the integrity of the Court's narrow ruling on Petitioner's Brady claims during prior habeas proceedings, but rather is relevant to constitutional violations at his trial:



Sedley Alley has only recently come upon such exculpatory evidence, because the evidence had been withheld in violation of *Brady*, and he was also misled by trial testimony and documentation which led him to believe that exculpatory evidence did not exist. Nevertheless, having recently conducted further investigation into the circumstances of the offense and the trial, Sedley Alley has uncovered the following evidence which indicates that the prosecution did, in fact, withhold exculpatory evidence which was material to his conviction and/or sentence.

Motion for Relief, R. 129 at 27-28. It is clear that such claims may not form the basis for a motion for relief from judgment pursuant to Rule 60(b). Gonzalez, 125 S.Ct. at 2647. Accordingly, the Court is required to treat Petitioner's allegation of fraud for what it is, a prohibited attempt to bring before the Court evidence of Brady violations during Petitioner's trial that were not raised during his initial habeas proceedings. The Court is without jurisdiction to consider such a claim. Id.; 28 U.S.C. § 2244(b)(3)(A).

Petitioner's penchant for hyperbole aside, the Court's holding does not countenance the execution of habeas petitioners because they do not "catch" the state in a lie in a timely fashion. Rather, the Court's holding simply acknowledges the constraints placed on it by governing habeas law, and yields to its binding authority. If, as Petitioner seems strongly to believe, the Sixth Circuit Court of Appeals determines that Petitioner's newly proffered evidence sufficiently raises a Brady claim deserving of this Court's consideration, then perhaps that body will grant him leave to file a second or successive habeas petition, which is the

only appropriate medium for Petitioner's newly articulated due process claims. See 28 U.S.C. § 2244(b)(3); Felker v. Turpin, 518 U.S. 651, 663-64 (1996). Other courts of appeals confronted with similar scenarios have taken this approach, in order that they not execute citizens for failing to specifically plead potentially meritorious Brady claims they were perhaps unable to articulate due to the conduct of the state. See e.g., In re Johnson, 322 F.3d 881 (5th Cir. 2003) (granting habeas petitioner leave to file second or successive habeas petition raising Brady violations, as discussed by subsequent opinion in Johnson v. Dretke, 2006 WL 598129 (5th Cir. March, 13, 2006)); In re Lott, 366 F.3d 431 (6th Cir. 2004) (granting Petitioner leave to file second or successive habeas petition raising Brady claim); Cooper v Woodford, 358 F.3d 1117 (9th Cir. 2004) (granting habeas petitioner leave to file a second or successive habeas petition based on Brady violation which arguably demonstrates actual innocence). Therefore, adequate procedures exist to ensure that Petitioner will not be executed for his failure to timely discover exculpatory evidence because of the conduct of the State's attorneys; the Court need not belabor this point any further. Accordingly, Petitioner's motion to alter or amend this Court's judgment dismissing Petitioner's fraud upon the court claim is DENIED.

#### **B. Procedural Default and the Schiavo Act**

Petitioner asserts that the Court has failed to give proper consideration to his argument that Congress' passage of Public Law 109-3 ("An Act For The Relief Of The Parents Of Theresa Marie

Schiavo") entitles him to be excused from the Court's previous finding of procedural default as to some of his original habeas claims. This claim is patently frivolous. The Schiavo Act clearly limits standing to bring an action under the Act exclusively to the parents of Terry Schiavo. Furthermore, jurisdiction for such an action is vested exclusively in the Middle District of Florida. Petitioner is obviously unable to satisfy either of these essential pre-conditions to seeking relief under the Act. Furthermore, as this Court's previous order makes clear, relief from judgment pursuant to Rule 60(b)(6) is extremely rare in the habeas context, and limited to cases presenting "extraordinary circumstances." Gonzalez, 125 S.Ct. at 2649. Clearly the Schiavo Act is not an "extraordinary circumstance" justifying the reopening of Petitioner's procedurally defaulted habeas claims where Petitioner is not able to satisfy the Act's jurisdictional predicates and the Act has absolutely nothing to do with habeas corpus. Other courts that have considered the equivalent argument of Petitioner's have reached the same conclusion, for the same reasons, as this Court. See Smith v. Bell, 2005 WL 2416504 (M.D. Tenn. Sep. 30, 2005); King v. Bell, 392 F.Supp.2d 964, 1016 (M.D. Tenn. Sep. 27, 2005). This claim does not merit further consideration. Accordingly, Petitioner's Motion to Alter or Amend this Court's judgment denying his claim for relief pursuant to the Schiavo Act is DENIED.

**C. Petitioner's Invocation of "Inherent Article III Powers"**

Petitioner contends that the Court has erroneously refused to grant him relief pursuant to purported "inherent powers" which

cannot be constrained by Congress or the various rules of court. As the Court's previous order makes clear, the Court is mindful that the Court possesses traditional, and inherent, equitable powers regarding its judgments, but also that those powers now find their expression in Rule 60(b)(6) and in the "savings clause" of the Rule. See Order, R. 169 at 5-8. The crux of Petitioner's argument in this regard appears to be that the Court enjoys inherent powers which allow it to ignore the constraints of statutes setting forth restrictions on the Court's exercise of its habeas jurisdiction, as well as rules of court which limit the grounds and methods by which one may seek relief from a previous judgment. However, as the Court stated previously, such an exercise of the Court's habeas jurisdiction would be unprincipled, contrary to the limitations on the Court's habeas jurisdiction imposed by Congress, and would render the express requirements of Rule 60(b) completely superfluous. Order, R. 169 at 5. Where appropriate, Petitioner has received consideration of his claims for relief from judgment pursuant to the inherent powers which the Court possesses and which are alluded to in Rule 60(b). See Order, R. 169 at 18-20 (discussing Petitioner's Schiavo claim under both Rule 60(b)(6) and the "savings clause"). Thus, the Court has appropriately considered its "inherent powers" in resolving Petitioner's motion for relief from judgment; that the Court is unwilling, indeed unable, to exercise powers of unprecedented scope and apparently limitless force merely at the behest of the Petitioner cannot serve as a ground to alter or amend judgment.

Accordingly, Petitioner's motion to alter or amend as to this ground is DENIED.

**D. Petitioner's "Supplement to Motion to Alter or Amend and/or Request for Relief From Judgment In Light of Intervening Case Law"**

Petitioner filed the above captioned document on January 12, 2006, essentially seeking to re-litigate his claim that he is entitled to a certificate of appealability on his previously denied HAC claim on the basis of the Supreme Court's intervening decision in Brown v. Sanders, 126 S.Ct. 884 (2006). In Brown, the Court effectively abandoned the distinction it had drawn in previous cases establishing disparate treatment for "weighing" and "non-weighing" states wherein a defendant has received the death penalty based, in part, on a subsequently invalidated aggravating circumstance or factor. The Court adopted a single rule to cover both weighing and non-weighing states:

We think it will clarify the analysis, and simplify the sentence-invalidating factors we have hitherto applied to non-weighing States, . . . if we are henceforth guided by the following rule: An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process *unless* one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances.

Brown, 126 S.Ct. at 892 (footnotes and citations omitted) (emphasis in original). Thus, Brown addresses the Court's concern that a sentencer's decision to impose death can be skewed by the admission of evidence in aggravation that should not be before the jury

because it supports a subsequently invalidated factor and the jury does not have any other ground for considering the evidence (such as the "omnibus" circumstances of the crime factor utilized in California and discussed in Brown). Id.

Petitioner contends that Brown entitles him to a certificate of appealability because, unlike in California, there is no "circumstances of the offense" aggravating circumstance in Tennessee, and, therefore, his jury improperly had before it evidence supporting the allegedly invalid HAC aggravating circumstance which it found as a condition to sentencing him to death. Furthermore, Petitioner argues, because no appellate court has performed a constitutional harmless error analysis or reweighing minus the allegedly invalid circumstance, his constitutional violation persists and entitles him, minimally, to a certificate of appealability on his HAC claim.

While Petitioner is correct in asserting that Tennessee's statutorily enumerated aggravating circumstances do not include an omnibus aggravating circumstance, that alone is not sufficient to grant him relief under Brown. In Brown, two of the aggravating factors found by Sanders' jury, including California's HAC aggravating circumstance, were subsequently invalidated by the California Supreme Court. Id. at 893-94. In Petitioner's case, as made clear by the Court's order denying relief from judgment, the Supreme Court and the Sixth Circuit Court of Appeals have held that the Tennessee Supreme Court cures any facial invalidity in Tennessee's HAC aggravating circumstance by application of a valid

narrowing construction of the aggravator in its mandatory review of all death sentences imposed in Tennessee. See Bell v. Cone, 543 U.S. 447, 455-59 (2005); Payne v. Bell, 418 F.3d 644, 657-58 (6th Cir. 2005). Thus, the HAC aggravating factor relied upon in sentencing Petitioner to death has not been subsequently invalidated; it is cured of any facial invalidity by the Tennessee Supreme Court's application of its narrowing construction on appeal. Furthermore, the Tennessee Supreme Court is entitled to the presumption that it has applied its narrowing construction so long as it does not affirmatively disclaim application of the construction during its mandatory review. Cone, 543 U.S. at 455-56; Payne, 418 F.3d at 657-58. As this Court's prior order demonstrates, the Tennessee Supreme Court is entitled to the presumption that it applied its narrowing construction of the HAC aggravator in Petitioner's case, thus curing any facial invalidity in the aggravator. Order, R. 169 at 14-15. Accordingly, Petitioner's reliance on Brown is misplaced, and his motion to alter or amend and/or request for relief from judgment on the basis of that decision is DENIED.

#### **IV. COLLATERAL PENDING MOTIONS**

Petitioner has pending numerous motions which are mooted by the Court's judgments denying his motion for equitable relief and denying the instant motion and supplement. These motions include: Petitioner's Motion For Discovery (#2) In Support Of Motion For Equitable Relief, R. 157; Petitioner's Motion For Status Conference, R. 159; Petitioner's Motion For Extension of Time To

File Reply, R. 164; and Petitioner's Motion For Discovery (#3) In Support of Motion For Equitable Relief, R. 167. Accordingly, the above motions are DENIED as moot.

**V. CONCLUSION**

For all of the reasons given above, Petitioner's Motion to Alter or Amend Judgment, including his supplement to the motion, is without merit and is therefore DENIED. Accordingly, the collateral motions which remain pending as discussed in section IV, supra, are mooted by the Court's judgment and are therefore DENIED.

**IT IS SO ORDERED** this 22nd day of March, 2006.

s/Bernice Bouie Donald  
BERNICE BOUIE DONALD  
UNITED STATES DISTRICT JUDGE